

**Town of Milford
Zoning Board of Adjustment Minutes
February 12, 2015
Case #2015-02
Denise Donovan & Gordon Pittsley
Special Exception**

Present: Zach Tripp, Chairman
Fletcher Seagroves, Vice Chair
Michael Thornton
Joan Dargie
Len Harten, Alternate

Absent: Laura Horning
Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

The applicants, Denise Donovan and Gordon Pittsley, owners of Map 29, Lot 70, located at 69 Union St, in the Residence "A" district, are requesting a special exception from Article V, Section 5.02.2:A.1 to allow a home occupation (Adler Hobby), in accordance with Article X, Section 10.02.3.

Minutes Approved on March 5, 2015

Zach Tripp, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board; then introduced the Board. He read the notice of hearing into the record as well as the list of abutters. Vito Comparato and Sandra Comparato were present.

Applicant's presentation:

D. Donovan explained that they want to have a hobby shop in the barn at 69 Union Street.

L. Harten asked about the signatures in Section 4 of the application, whether the owners or representatives of the owners were present. He asked if the people making the presentation were the owners or had proof of authorization to represent the owners.

D. Donovan stated that Kenneth and June Williamson are the current owners of the property.

L. Harten said the owners' signatures should have appeared so the applicants could make the presentation.

After discussion, it was determined that the owners' signatures are on the page lower down, in the wrong place, and the question was raised about tabling the case.

F. Seagroves made a motion to have it corrected rather than postpone.

Z. Tripp then had the applicants proceed with their presentation.

D. Donovan said they were asking for a Special Exception to run a shop out of the barn.

Z. Tripp asked if they expected to be full retail, open 7 days a week, morning or night or by appointment.

G. Pittsley said they typically have hours and do mail order. They are open towards they weekend more not during the week.

Z. Tripp asked what their hours would be if they opened tomorrow.

G. Pittsley said 4 p.m. to 9 p.m. and on weekends noon to 8 p.m. He brought photos about what he does. The pictures were of his current shop at his home in Hollis with a small space in the back where he has retail product and of the gaming tables.

M. Thornton asked if it was similar to a military sand table.

G. Pittsley said yes. He showed a picture of a typical game night, eight or ten guys. They currently have about 380 SF. and the proposed space at 69 Union would roughly be 580 SF.

M. Thornton asked how many cars could park in front.

G. Pittsley said looking from the top area at the left side of the house that would allow parking, right along the wall.

Z. Tripp asked if there was enough room to drive in and park perpendicular to the building.

G. Pittsley said yes.

D. Donovan said generally there would be three to five cars that would come and stay awhile, not coming in and out.

Z. Tripp asked if that was when hosting a game.

D. Donovan said yes and even they shop they stay awhile.

Z. Tripp asked that the proposed entrance was at the rear of the barn is there a path in the back?

G. Pittsley said when he viewed the property he was excited. His friend's son has a wheelchair, and there is a large door and ramp. If he could put in a door he would be all set.

M. Thornton asked if there was a way for a wheelchair to get around there.

G. Pittsley said yes.

M. Thornton asked about how cars get around back.

G. Pittsley stated the barn was a horse barn and there is a ramp to the rear door. It would need some work-flooring, new door and stair ramp so it would not be a big step for a wheelchair. Also a section where a wall would go up and give total square feet on the bottom floor of 560 to 580 SF to play with.

J. Dargie asked if that included the barn and if the barn was attached to the house.

D. Donovan said the barn was attached to the house up stairs and down stairs.

Z. Tripp asked if the barn was livable space.

G. Pittsley said it had power, heating and raw walls. He would need to put insulation, better lighting and a door in.

Z. Tripp asked what the floor was.

G. Pittsley said it was a wood floor.

M. Thornton asked about restroom facilities.

G. Pittsley said there was a bathroom just off the main floor.

Z. Tripp asked if that was included in the square footage.

G. Pittsley they would have to walk through the kitchen.

M. Thornton asked if that was handicapped accessible.

G. Pittsley said yes it is.

M. Thornton said he would encourage them to speak with the planning people about the handicapped ramp.

G. Pittsley said he's aware of that; his mother is in a wheelchair.

Z. Tripp asked about a single car width paved ramp from the barn.

Applicant said that is in the front.

Z. Tripp asked if that would be for parking.

Applicant said that would be their personal parking.

Z. Tripp asked how they would control customers from parking there.

G. Pittsley said they are lining those things up and getting past this stage would be a big step.

D. Donovan said they will talk with the Planning Board.

F. Seagroves asked if they were going to the Planning Board.

D. Donovan said yes, for any safety issues and the Building Inspector.

M. Thornton said they would show the applicants how to measure.

J. Dargie asked if the home occupation would be confined to one floor of the dwelling or separate building, not more than 25 percent of such floor. If someone had a garage and would do a home occupation they would not count SF of the garage to get 25 percent. If they had to, it appeared it would be 240 SF.

Z. Tripp agreed.

G. Pittsley said they exceed the total if they include the barn. They were told the barn should be included in the SF because it was part of the house.

F. Seagroves said that was his question, too.

Z. Tripp said in past applications that wanted to do a business in the garage they had to do SF in the garage, or in the house the SF in the house, not the attached garage. It sounded like it was a garage.

G. Pittsley said the den was taking a good section of the barn to create the den.

D. Donovan said the den was now part of the house.

J. Dargie said include that section and not the barn.

Z. Tripp agreed.

G. Pittsley said if that space could be converted to a more level space it would be OK to use it?

J. Dargie said that would be on the building permit.

M. Thornton said where it is attached; they consider it all one building.

J. Dargie said even an attached garage would not be counted. The facilities they will have are in the house that technically becomes part of the SF of the shop.

F. Seagroves said if you looked at it that way and he could only use 25 percent of the living space you were taking the barn out and 25 percent and moving back into the barn.

J. Dargie said 25 percent of the first floor dwelling unit or the accessory building.

Z. Tripp said he looked up accessory building. He read from the definition that it must be on the same lot with and of a nature incidental and subordinate to, the principal structure. They have to look at 25 percent of the barn space or 25 percent of the living space but they would have to be inside the living space. Either use the living space inside the house or use the living space inside the barn.

J. Dargie said unless convert the barn to living space and then come back.

D. Donovan said this is how we were guiding to do it from zoning.

Z. Tripp understood. The Board had specific questions to go through. They have 2,255 SF and asking for 563 which are pretty much at the 25 percent. He asked if the dimensions provided where from when they walked the boundary.

G. Pittsley said yes.

L. Harten asked if it included the SF of the bathroom which was part of the operation; unless they had more than one on that floor.

D. Donovan said there was only one.

Z. Tripp said that 563 did not include the bathroom and would be required for retail.

L. Harten asked if the 560 included the bathroom square footage.

Applicants said it didn't.

D. Donovan said they could just cut back.

Z. Tripp was having trouble reconciling difference between the accessory structure and the living space.

F. Seagroves agreed.

Z. Tripp said they needed guidance from the Community Development office.

J. Dargie asked how they came up with this.

Z. Tripp said using the living space and 25 percent within that or using separate structure and using 25 percent of that.

M. Thornton suggested looking at the tax rolls to see if it was taxed as a garage or accessory, which are taxed differently than living space. If they convert it to get 25 percent and still have use of the garage and barn.

Z. Tripp was having trouble reconciling the layout on the top with the applicants'. Was the 10 x 20 section, was that the den built into the barn?

G. Pittsley said the lower section was the living section of the barn.

Z. Tripp said the remaining part of the barn is 10 x 20. That was the unfinished portion. They were counting the 10 x 10 as living space. It is not.

M. Thornton said if they made that living space to get enough of it to make the shop it would be taxable as living space, too. They would have to do whatever it took to get from where they are now to whatever conditions are to get that up and running.

G. Pittsley said that was what contractors were for.

Z. Tripp said it stated the first floor was 1,356 SF and someone did math at 339 at 25 percent.

M. Thornton said if they made the rest of the barn into living space they would have larger square footage to take 25 percent off and perhaps have more room.

J. Dargie said it appeared someone did that math and that is short that 10 x 20 space.

Z. Tripp asked if they would be able to make it work inside the living space. He thought it had to be contained inside the first floor living space.

G. Pittsley said it was possible; they haven't sat down with Planning.

J. Dargie asked if they wanted to get clarification before going to work.

F. Seagroves said the applicants haven't bought the property.

D. Donovan said it was contingent on that.

F. Seagroves said in the handbook, #3, it says home occupation should be confined to the first floor of the dwelling unit OR accessory buildings.

Z. Tripp said if they make the remaining part of the barn the first floor.

F. Seagroves didn't know what it takes for them to declare it a living space.

Z. Tripp commented, because they are almost by nature creating the store.

D. Donovan said if they just put in walls, insulation and heating, it would be pretty much living space.

M. Thornton said it depended.

Z. Tripp asked if it was connected to the living space.

D. Donovan said there was a door by the den.

F. Seagroves said the two buildings are connected.

D. Donovan said yes.

Z. Tripp said the question was if they build out and don't insulate and put in heating and plumbing it would be a big room and they could make the store.

M. Thornton said it would be 25 percent of the first floor and give them more room.

Z. Tripp said they were taking a portion of the barn which is an accessory structure and changing it to living space which is an exchange of the den and then taking footage to meet the 25 percent. He asked the Board if that logic made sense.

F. Seagroves said whatever the Building Dept. says had to be to meet living space.

M. Thornton said it would have to meet all current codes. If electrical and insulation there met codes, they were okay. They would have to have someone go out and look at it.

G. Pittsley said they had the Building Inspection on the place. The current wiring is all exposed and sort of new.

J. Dargie said the square footage of the bath is they only thing that has to be deducted from the square feet.

Z. Tripp suspected they would have to move it inside the shop, but wasn't sure.

G. Pittsley said there was a lot of money involved in converting into a store; they had to make sure all their ducks were in a row.

Z. Tripp asked if the Board had further questions, before opening the meeting to discussion. Were they in line with treating Step #1 as converting the barn into living space and using that to make the 25 percent?

J. Dargie she would guess that must have been what building and planning did.

Z. Tripp said yes, I think so too.

L. Harten said he would be comfortable with that.

Z. Tripp said once they build it and get insulated and heating and using that square footage. He asked if there were any other questions.

J. Dargie asked about parking and do we know the measurements from the side wall to the edge. It looked like there was room, but you don't want people backing onto Union Street.

G. Pittsley said he has been in and out and done a practice run. He pulls in toward the wall so his headlights don't bother anybody. There is all kinds of room to move around, turn around and get out.

J. Dargie asked, even if people park six feet from the building with a large vehicle because they are afraid of hitting the building.

D. Donovan said there is room in back to turn around and it is all gravel.

J. Dargie asked if it was a wall going by the neighbors so people would not be driving on their property.

G. Pittsley said yes.

F. Seagroves asked the hours they would be open.

G. Pittsley said it would depend on the people when they want to game. They usually do well when people get out of work. We usual start around 3 and go until 9 or 10.

F. Seagroves said it was not going longer than 10, 11 or midnight. They can say play until 10 and stop the games and pick up the next day?

G. Pittsley said most games come to a conclusion in one evening. Most of them are two hours long.

F. Seagroves said there are no really long games?

G. Pittsley said no. They go other places for that.

Z. Tripp asked about the lighting along the barn.

G. Pittsley said he would put in some lighting to see the barn, maybe motion-sensor.

M. Thornton said if they have the entrance at the rear they would need lighting there.

G. Pittsley agreed safety first.

Z. Tripp mentioned having downward lighting to not disturb neighbors.

F. Seagroves asked if applicants were going to the Planning Board.

G. Pittsley said if they got this approved, they would be going to the Planning Board.

F. Seagroves said some of these questions would be taken by the Planning Board, but if they weren't going to the Planning Board the ZBA wants to make sure they discuss them.

Z. Tripp commented, especially with the parking.

M. Thornton said all that was needed for a problem would be for someone to take the first parking space and then no one else could get to the parking in the back.

G. Pittsley said he had been doing this for 10 years. An good option would be a sign on the wall saying No Parking—a small one. Town's stipulations is 2 x 2—have one to say which way for entrance and which way for parking.

Z. Tripp opened the meeting for public comment.

Vito Comparato, owner of 57-59 Union St. which abuts the subject property expressed concerns and how he became concerned. When he was notified by certified mail of the hearing he read it and it looked simple. He researched the name Adler Hobby on the computer to find out their status. One of the first things that came up was the first two pages of a 8/11/14 Hollis Board of Selectmen meeting (he provided copy to the Board) during which a resident of 76 Twiss Lane, Bruce Bauer, addressed the meeting, raising a number of issues of compliance and legitimacy of Adler Hobby. One of those was they were deceptive in describing themselves to the Zoning and Assessment Board. He was having the same feeling. He is also concerned that we as a town understand that this is not a store. It was a gaming

hall. It is a paid membership gathering place. Minimum of 60 percent of their business is private club membership. He said Union St. is a beautiful residential street. It is used by school kids to walk to and from school. There are homes dating back to 1803. None of the homes have fences in back. This means possible overflow of members onto his property. Bruce Bauer also pointed out that the business didn't comply with limitations and conditions by Hollis, i.e. hours worked, number of employees, and stock. Mr. Comparato had concerns with lack of transparency and mature of the business and disturbance.

M. Thornton asked about disturbances in their current location.

V. Comparato didn't know but said on their website they advertised renting it as a hall.

Z. Tripp asked applicants to respond to whether the business was a hall and the issue re non-compliance with ZBA conditions.

D. Donovan said they wrote to Mr. Bauer in response. They do not rent out their building. Her husband was doing something with his gaming club. Things were blown out of proportion. They never had a complaint in eight years of traffic noise or anything. At one point when her mother passed away they had to work off hours. She admitted it and it would not happen again. It was not a paid membership. At most there were 5 to 8 people that ever come. They don't have employees.

G. Pittsley said when they have employees they hire a couple of friends to prepare for going to a gaming convention.

M. Thornton commented those are not employees.

D. Donovan said they do a gaming convention and go to gaming halls. There was information on the web site and his Facebook page was hacked. They were considering downsizing and her mother passed away and they decided to move.

V. Comparato asked if the board to consider what he presented as documentation that the applicants did not follow directions of the zoning board.

Sandra Comparato came forward. She has lived at 59 Union St. about 12 or 13 years. It is a beautiful neighborhood with a lot of teenagers walking to and from school; it is basically families with young children and teenagers. There are not any businesses in the area except next to the police station there is an auto repair store. The land goes to the east and there is a small stream and wetlands at the bottom. With parking and snow removal it is all going to drain into the wetlands. Parking behind the barn is directly rear of where Bruce Merrill lives. He couldn't be there this evening. Things would be shining into this house and yard. They would be pulling into the field and turning around and his yard is right there. The pool is centered in the yard; you can't park around it. Also the ramp, from their property the next building is a large apartment building with five apartments.

M. Thornton asked which way.

S. Comparato said the opposite side. She said the length of the house ran the length of Union St. It didn't go back.

J. Dargie asked if they were right next to 69 Union.

V. Comparato said the picture was not current. He pointed out 57-59 and the apartment building.

S. Comparato said you could see the barn in the picture. The ramp was located 10 to 15 ft. along the apartment building boundary. The apartment building and 69 Union have about 15 to 20 ft. between the buildings.

M. Thornton asked if the apartment building was between her residence.

S. Comparato said it was wide open.

V. Comparato pointed out his property line and along this line down to the street called the Bruce Merrill house. He pointed out the blue area that was his property and the grass area that he mows right down the property line.

M. Thornton asked if a fence would help.

S. Comparato said no, it was wide open. There were trees and a stone wall and children play there –her grandchildren. She wasn't sure what a hobby store was and researched it online. She was surprised to find that Adler was basically a membership. It claimed to have members in 2014. They had customers

who can be online or possibly go into the shop. They claimed in Hollis their hours were 1 to 9. At 9 p.m. when she is having a barbecue with family she doesn't want to have cars pulling in. There are deer and wild turkey in the area. This business would be attractive to teenage boys. She pulled information off Facebook which she found upsetting and gross.

L. Harten asked about which lot she was speaking of.

V. Comparato pointed out the property line and his house and property line.

There was discussion about the property lines.

J. Dargie said their property went all behind the property, even behind the pool property.

D. Donovan disagreed.

M. Thornton stated it was not to scale.

V. Comparato said behind their property was about 200 foot section that was his property that goes to the left to the Bruce Merrill stone wall.

M. Thornton said they needed something larger in scale.

Z. Tripp asked for any other questions.

S. Comparato said it was advertised as a gaming club and retail. Forty percent is retail and sixty percent is gaming, which are historic and sci-fi. Some games are warlord games. She was worried about teenage boys. It was a family neighborhood. They would lose backyard privacy. She noticed they have gatherings sometimes in their locations. She was concerned that at this location it would be upsetting to the neighborhood. Also, the barn being discussed, built in the 1800s was a carriage barn for travelers through Milford. At one time it was an inn. It is beamed wood. To have insulation and wall board there and people playing games in it, to her, was not a good thing. The best location for this type of business is at the Granite Town Plaza where they have card games and there is plenty of room.

M. Thornton asked where the applicants would put their residence.

S. Comparato said they could live in Hollis.

Z. Tripp asked for further public comment. There was none. He closed the public comment portion of the meeting and asked applicants to address the issue of gatherings.

D. Donovan said every once in awhile they have a game where people come, usually 10 people. People carpool. It would be inside. As far as Facebook, you can't control what people put on your Facebook page.

Z. Tripp asked for any further questions from the Board. There were none. He then wanted to go through the criteria to be met for Home Occupation.

1. The person conducting the home occupation shall reside in the dwelling unit, and there shall be no more than one (1) non-resident person employed in connection with such occupation.

D. Donovan said there were no employees and the applicants would be living there.

2. There shall be no evidence outside the dwelling, except permitted signs and required off-street parking, that the dwelling contains a home occupation.

D. Donovan said there would just be a sign for parking.

Z. Tripp asked if there would be any other indication outside of the retail space.

D. Donovan said no.

3. The home occupation shall be confined to one (1) floor of the dwelling unit or accessory buildings and not more than twenty-five (25) percent of such floor shall be used.

Z. Tripp said they had already discussed this.

4. Accessory finished goods may be provided for sale in conjunction with the home occupation, sold and stored in allowed home occupation space only.

Z. Tripp asked if they agreed.

D. Donovan said yes.

5. The home occupation and the conduction thereof shall not impair the residential character of the premises nor impair the reasonable use, enjoyment and value of other residential property in the neighborhood.

D. Donovan said no. The neighborhood and house are beautiful.

Z. Tripp said that was one of the questions the Board would have to address. He then asked the applicant to read the application into the record.

Description of proposed use:

A Special Exception, as specified in Article 5, Section 5.02.2A:1 of the Zoning Ordinance is requested to permit: 69 Union St, Milford NH for a special exception for a Home Occupation business as outlined under Article 10.2.3 for Adler Hobby.

1. The proposed use shall be similar to those permitted in the district:

A low profile business similar to an antique store with low traffic flow and patrons stay for many hours. Convenience store at Union and Birch < ¼ mile south on Union St. and Commercial use starts at Cherry St < ¼ mile north on Union St.

2. The specific site is an appropriate location for the proposed use because:

Due to the attached barn, this allows a perfect setting for a home based business such as our mom & pop hobby & game store. It allows a private entry and exit and handicapped access.

3. The use as developed will not adversely affect the adjacent area because:

All activities for shopping and table top gaming are a hobby and low key and generally take time to discuss and work on as this is a hobby based business; again no constant traffic flow.

4. There will be no nuisance or serious hazard to vehicles or pedestrians:

Again, since there is no constant flow of traffic and this is a destination where people come and stay for sometime there will be no nuisance or hazards associated with this business. We also sell online and do a lot of mail order reducing traffic flow.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

There is a bathroom available for use to customers.

Z. Tripp then moved on to discussion of the case.

F. Seagroves commented that, being a veteran, he saw the web page and didn't like to see the US flag upside down.

D. Donovan said it would be addressed.

F. Seagroves said they still didn't know how they were going to handle the 25 percent.

J. Dargie had a problem with that. She didn't understand why Building & Planning told it either had to be 25 percent of the barn space or 25 percent of the whole house.

Z. Tripp was thinking if they got 1300+ current living space and expanded that into the barn.

M. Thornton said it would be more than that.

Z. Tripp said he was speculating on the logic of the office if they are expanding the living space and then they would have enough.

F. Seagroves said he had to believe they were doing that. There was no "and/or."

Z. Tripp suggested a stipulation that the first floor living space be expanded.

L. Harten asked if they were talking about putting in a condition.

Z. Tripp said for clarification, but a condition, would be that the first floor living space is expanded from the current to 2,255 SF.

M. Thornton said, or thereabouts.

J. Dargie asked to see the entrance and where it was. It was pointed out.

Z. Tripp asked if the Board agreed to discuss the questions and then discuss conditions. They moved on the questions/criteria for Home Occupation under 10.02.3.

1. The person conducting the home occupation shall reside in the dwelling unit, and there shall be no more than one (1) non-resident person employed in connection with such occupation.

F. Seagroves said they already stated that.

2. There shall be no evidence outside the dwelling, except permitted signs and required off-street parking, that the dwelling contains a home occupation.

They already stated that.

3. The home occupation shall be confined to one (1) floor of the dwelling unit or accessory buildings and not more than twenty-five (25) percent of such floor shall be so used.

J. Dargie said that is yes if they have conditions for expanding.

4. Accessory finished goods may be provided for sale in conjunction with the home occupation, sold and stored in allowed home occupation space only.

Z. Tripp said this was similar to one of the Special Exception questions. There was a statement comparing the residential tenor of the premises and not other residential property in the neighborhood.

F. Seagroves said it was brought up re cars coming in and out with headlights. In reviewing the map it appeared Lot 29-71 was an apartment house with a big parking lot in back. It looked like it would match their parking lot. Any interference they may incur is probably already being incurred. He didn't feel it would impact the area and the residents had a right to do certain things with their property.

M. Thornton said light pollution could be abated by a fence and is almost imperative. As far as changing the structure inside, he didn't know that was valid for someone else to object to. He understood the concerns with the historical aspect.

Z. Tripp asked if it would impair the residential character of the premises.

M. Thornton said if there was no fence and a lot of coming and going in evening hours, there would be a lot of light, and that would to some extent change. It was mentioned there is a parking lot next door. If they put a fence there it would facilitate. He didn't see any of their business with comings and goings by foot and car would impair use of anyone else's property.

J. Dargie had concern re hours of operation. Nine or ten pm seemed late for a residential neighborhood. She realized there was an apartment building and there may be 10 cars that leave at different times. She had a problem with the hours. She would be annoyed if she lived next door.

Applicant stated they were a night and weekend business.

J. Dargie said that is when people are relaxing. She had reservations. Most home occupations are UPS picking up packages and shipping. But you don't have ten people at a time. It is a night business. It is a residential area. It is not that secluded. She lives on a street near. There are a lot of kids walking. The business will have people coming out about the time kids are getting out of school. She can't really say yes to that.

Z. Tripp asked if she would say yes if they put a condition on limiting the hours.

J. Dargie said that didn't sound like it would work by limiting hours.

D. Donovan said they get out of work.

J. Dargie said they get out of work at 5 or 6. Another issue is if it was more to the front, but they need people to come into the back.

G. Pittsley said all their plans were done without talking to the Planning Board to see what they can do. They would want to address those issues. Knowing somebody objects is not making him want to buy the property. They have a lot of males between 16 -94 playing with soldiers.

J. Dargie understood. When everybody is there it is quiet. When everybody is leaving it is noisy and there is a light at night.

L. Harten said the question was whether they were going to the Planning Board from here. He was concerned about parking and possible lighting and things that are more Planning Board issues. He didn't see they could stipulate how vehicles were to be parked and how lighting comes on and goes off. They are talking about motion lights.

Z. Tripp had same concerns and would probably approve conditional on Planning Board also approving lighting, parking, and accessibility.

L. Harten said he didn't have a problem with the operation. He mentioned the neighbors' concerns. He wanted to make sure that parking and lighting were proper so as to not disturb abutters.

Z. Tripp agreed. Home occupation won't impair the residential character. All home occupations have some cars. The current residence is paved in the back of the barn so he assumed the current owner was parking cars there. Biggest concern is getting parking in and how many spaces allowed and the lighting. He didn't want to have spotlights shining on the neighbors. He would make a condition pending approval by the Planning Board. He didn't think they needed to require a fence but would say the applicants should consider it. He agreed with M. Thornton that fences make the best neighbors.

Z. Tripp then proceeded to discussion of the Special Exception questions.

1. Is the proposed use similar to those permitted in the district?

F. Seagroves – a home occupation is allowed in Residence A under Special Exception. He would say the proposed use was similar.

L. Harten – didn't have a problem with that. His only comment was that they have the Friends store nearby. That is retail and probably grandfathered. No problem with proposed use being similar to those in the district.

J. Dargie – no, didn't think it was similar. Most home-based business are not operating until 10 or 12 at night.

M. Thornton – thought it was similar enough to other businesses, churches, schools, with church people coming and going at the same time and flood lit at night. He couldn't see a reason to say no except to caution against a large influx of traffic right after school. That was the only legitimate issue he could see.

Z. Tripp – home occupation is permitted per 5.02.2A:1. Section 10.02.3, which is the five criteria just discussed. Residence A is intended to provide lower density residential and individual lots. Accepted uses include: single-family homes and their accessory uses and structures, telecommunication facilities and farm roadside stands. He read additional uses allowed by Special Exception: home occupations, recreational facility, day care, churches or houses of worship, schools, Bed & Breakfast, recreational facility, senior housing, utility, and office space. The home occupation proposed is similar to ones allowed by Special Exception in the District. It has similar or lower intensity use.

2. Is the specific site an appropriate location for the proposed use?

M. Thornton – yes, the only possible exception that it would be completely in a retail setting. But the scope of this didn't permit a retail setting. It was not revenue dense enough to justify its own store front. He didn't see a VFW which tends to get rowdy.

J. Dargie – concerned about the hours and parking.

L. Harten – Didn't believe the proposed site was an inappropriate location. It was probably low-key enough. It was a home occupation which is allowed in the area. Because it was a home occupation it goes with the ownership of the property and if they sell it, it probably goes away. It was not an inappropriate location.

F. Seagroves – it was not an inappropriate location. It is in a barn. If it was an old barn, he would not like to see it totally taken away – some old beams left out that might add to the business. He wouldn't like anything to change on the outside.

Z. Tripp – looking at location, it had space for it, a separate entrance. A good amount of existing pavement so he could see there could be appropriate amount of parking. Looked like a separate entrance for the home occupation.

3. Would the use as developed not adversely affect the adjacent area?

L. Harten – Didn't believe use would adversely affect adjacent area. He wanted to get back to the idea of them appearing before the Planning Board to resolve some previously mentioned issues. If everything were done in an appropriate manner, he didn't believe there would be any adverse effect.

J. Dargie – they are talking about developing it for home occupation. She wasn't sure about the parking. She didn't think it would adversely affect the adjacent area.

M. Thornton – didn't think adjacent area would be affected.

F. Seagroves – Didn't think so, either. They need to come up with parking and lighting. He only had one other concern, for the next question.

Z. Tripp – it would not affect the area. It should be transparent to the neighborhood. They have discussed parking and lighting. He was a little concerned with the hours. It was not unreasonable with a 9 pm mark, but how to control it? They could say they go from 8 to 9 but it felt like a business that could say “Well, why don’t we go to 10” and before you know it, it is midnight. That was the only thing he struggled with. It could tend to snowball. The applicants appeared to be sincere and want to be good neighbors.

L. Harten – said with some other home occupations they have specified or limited the hours. Maybe they could stipulate that the hours go no longer than an appropriate time. He didn’t like to try to control a business.

Z. Tripp asked if they would be opposed to a 9 p.m. curfew.

G. Pittsley that would lend itself to what the Board was saying. If you say 9, then before you know it people are talking and then it is 10.

Z. Tripp asked about making it 10.

G. Pittsley said most want to be home for the 11 o’clock news.

4. Will there be nuisance or serious hazard to vehicles or pedestrians?

F. Seagroves asked if any of the games were age-limited. In other words, you couldn’t play until you were eighteen.

G. Pittsley said a lot of what they do is from age 9 to 69. One of the interesting things about the games was that they can’t be brought at a regular store. A lot of manufacturers like to support gaming and hobbies. They will do a week open to everybody. They might get a promotional prize. Companies like to promote sportsmanship. With high school kids they provide good social skills that are lost sitting at a computer all day. He has had two students become architect and a West Point graduate due in direct relationship to something they did with local kids.

D. Donovan said there were no X-rated games.

F. Seagroves said he didn’t think so. He asked if kids would just stop in if going by.

D. Donovan said they are ceramic items. You have to paint a lot of them.

G. Pittsley said you have to play with someone across the table from you.

D. Donovan said they would not be coming in and out.

F. Seagroves asked if it was like playing a video game.

G. Pittsley said in Manchester they couldn’t come in without a parent’s permission and with parent’s permission they would have to have their homework done.

D. Donovan said parents had to come in.

In response to question from F. Seagroves, G. Pittsley said there was a lot of math, etc.

F. Seagroves said that answered his question about nuisance. He would say it would not be a nuisance.

L. Harten agreed. No nuisance or serious hazard to vehicles or pedestrians. He was particularly thinking about comings and goings of gamers getting onto Union St. He would not want them backing onto Union St, which was something the Planning Board would address. When he thinks of hazards to vehicles and pedestrians, he thinks of controlling coming and going to the property. If done properly he didn’t think there would be a hazard or nuisance.

J. Dargie said in general, not a hazard, just concerned about times of operation when kids are walking and not paying attention. They walk down the middle of the road.

D. Donovan said most people come after work, at 5 or 6.

There was brief discussion about when school gets out and work gets out.

M. Thornton – none.

Z. Tripp – Didn’t see any. Only nuisance would be parking and lighting. Agreed those are the purview of the Planning Board.

5. Are adequate appropriate facilities provided for the proposed use?

M. Thornton – yes. One concern is if they are going to be required to have a handicapped accessible restroom.

J. Dargie – facilities were adequate for proposed use. The building works fine. Not sure the spot where the building is located works fine.

L. Harten agreed. He repeated M. Thornton’s comment about compliance with the NH Barrier-Free Design Code which would encompass appropriate facility for the handicapped. He assumed it would be nice if the bathroom facility was in the same location as the gaming room, but as long as it is accessible by the handicapped, he didn’t have a problem.

F. Seagroves – yes. It seemed this was just an open barn. That is the best way to start, with an open space and fill it the way you want.

Z Tripp agreed. It looked like adequate space for parking and entrance. They already said they had to expand the living space and go through permitting and recommendation about bathroom space, and they will be going through the Planning Board process.

Z. Tripp then asked for discussion of the three conditions:

1. Approval is conditional to taking the 1,356 SF of the first floor and expanding to at least 2,255 SF of living space with the proposed 560 SF retail space including restroom.

M. Thornton made a motion.

F. Seagroves seconded.

Vote: L. Harten – yes F. Seagroves – yes J. Dargie – yes M. Thornton – yes Z. Tripp – yes

After discussion the following condition:

2. Approval will be conditional on Planning Board approval of final plan, including parking and lighting.

M. Thornton moved to accept the conditions.

F. Seagroves seconded.

Vote: M. Thornton – yes J. Dargie – yes F. Seagroves – yes L. Harten – yes Z. Tripp – yes

Z. Tripp asked for the Board’s thinking regarding hours of operation.

J. Dargie thought it was too late.

M. Thornton was concerned that it would go past 10 p.m. That is the latest reasonable hour to have flow of cars, except for one or two. They can’t regulate the apartment house next door when they are coming and going, but when the vast majority of those were to leave, if they to wrap up by 9 p.m. and be out by 9:30 p.m., they would have some room.

F. Seagroves didn’t know which way to go. The store up the road is open to 11 p.m. They could say stop at 9 p.m., but as mentioned, people like to stand around and chat. He didn’t know if there was a town statute on this. He didn’t want to just say “reasonable hour.”

Z. Tripp said if they did a condition they would state an hour.

F. Seagroves said he would go along with 10 p.m.

L. Harten said 10 p.m. seemed late. His conception was they were not dealing with a rowdy crowd. He couldn’t see them rushing out at 10 p.m. and spinning tires, etc. He would agree with a 10 p.m. conclusion.

Z. Tripp said he would not want any later than 10 p.m. HE said they were agreeing to no later than 10 p.m.

3. Approval will be conditional requirements for hours of operation are to be no later than 10 p.m.

M. Thornton moved to accept.

F. Seagroves seconded.

Vote: M. Thornton – yes F. Seagroves – yes L. Harten – yes J. Dargie – no Z Tripp – yes

Condition approved 4 to 1.

VOTE:

Is the special exception allowed by the ordinance?

J. Dargie – The exception in general? Z. Tripp said is what they are applying for allowed by the ordinance? J. Dargie said yes, as a general home occupation it is allowed by the ordinance.

M. Thornton – yes F. Seagroves –yes L. Harten – yes Z. Tripp – yes

Are the specific conditions present under which the exception can be granted?

F. Seagroves – yes L. Harten – yes M. Thornton – yes

J. Dargie – no, because she still had problems with impairing the residential character of the premises or reasonable use and enjoyment of the other residential property in the area.

Z. Tripp – yes

Motion to approve, with three special conditions:

F. Seagroves moved.

M. Thornton seconded.

Final Vote:

F. Seagroves – yes

M. Thornton – yes

L. Harten – yes

J. Dargie – no

Z. Tripp – yes

Z. Tripp informed the applicants their application had been approved and reminded them of the 30-day appeal period. He suggested they follow up with Community Development office.

D. Donovan asked about the Planning Board. Z. Tripp said to go to Community Development office and they would take care of it.

J. Dargie commented that one thing she had learned is, if you are doing something special in the neighborhood, go around the neighborhood first and see how the neighbors feel.

M. Thornton also suggested staying in touch with the neighbors who were there with concerns.